all the circumstances of the case: *Chicago West Div. Railway Co.* v. *Klauber*, 9 Ill. App. 613.

It is a question for the jury whether a special train can be run without negligence at such a high rate of speed as to make it difficult to check the same within a reasonable time and distance: *Marcott* v. *Marquette, &c., Railroad Co.* 47 Mich. 1.

An old man who was somewhat deaf, while driving a span of colts towards a railroad track down a narrow road from which the track was concealed on one side by a high embankment, stopped to listen, but hearing nothing drove on, and when close by the track a train appeared within a few rods. Fearing he could not control his horses where they were, he tried to cross the track, and was struck by the engine. It was held that the question of contributory negligence was one for the jury: *Chicago, &c., Railway Co.* v. *Miller*, 46 Mich. 532.

In an action against a street railway company for the injury of a child, the court charged, that if the driver saw the child in the street approaching the car, and in such close proximity that it might reach the track before the car passed, it was negligence on his part not to stop; it was held that this was error; and that the standard of duty in such a case was a shifting one, and for the jury: *Phila. City Pass. Railway Co.* v. *Henrice*, 92 Penn. St. 431; s. c. 37 Am. Rep. 699; see *Mauerman* v. *Siemerts*, 71 Mo. 101; *Johnson* v. *Chicago, &c., Railway Co.*, 49 Wis. 529; s. c. 1 Am. & Eng. R. R. Cas. 155.

Remarks.—In many cases the distinction drawn in the principal case—where the facts are uncontradicted, and the question of negligence to be drawn from those facts—is not alluded to, and evidently has been overlooked. Such cases must be read in the light of this fact. In others, however, it is clear that no such distinction was recognised as legitimate, and it was repudiated.

W. W. THORNTON.

Crawfordsville, Ind.

Supreme Court of Minnesota.

BURT v. WINONA & ST. P. RAILROAD COMPANY.

There may be a *de facto* court or office, the legality of which cannot be called in question, except in a direct proceeding by the state for state purposes.

Where a court or office is established by a legislative act apparently valid, and the court has gone into operation, or the office is filled and exercised under the act it is a *de facto* court or office.

The courts do not take judicial notice of the journal of the legislature.

When an enrolled bill is signed by the presiding officer of each house, and approved by the governor, if the subject-matter of it is within the constitutional power of the legislature, it is *prima facie* a valid law; if it assumes to create a court, the court is *prima facie* legal.

APPEAL from an order of the Mankato Municipal Court denying defendant's motion for a new trial.

Daniel Buck, for respondent.

Wilson & Gale, for appellant.

The opinion of the court was delivered by

GILFILLAN, C. J.—After the appeal in this case had been argued and submitted, but before it was decided, the appellant applied to the court, asking it to "disaffirm" the judgment appealed from, on the alleged ground that the court rendering it is not a legal court, and its judgment is therefore a nullity, because the act assuming to establish it, to wit, the Act of November 22d 1881, entitled "an act to establish a municipal court in the city of Mankato, Blue Earth county, Minnesota," did not receive a vote of two-thirds of the entire senate in its passage through that body, and consequently did not pass according to the requirements of the constitution as construed by the court at this term in the case of *State* v. *Gould*, 17 N. W. Rep. 276. To establish the fact it refers to the journal of the senate, and claims that the courts take judicial notice of the journals of the legislature in respect to the passage of bills.

The plaintiff answers that the court, if not a *de jure*, was at least a *de facto* court, and its acts and judgments cannot be impeached collaterally for want of legality in the court itself, nor its legal existence be called in question, except in a direct proceeding on behalf of the state for that purpose, as was the case in the *State* v. *Gould*, *supra*.

The argument of the defendant is that a judgment rendered without jurisdiction is void; that want of jurisdiction may always be shown; that if the legislative act under which the court assumes to act as such be void, there is a want of jurisdiction; and that this act being void there was no jurisdiction. Ordinarily, if the record shows that a court has assumed jurisdiction over a matter not committed to it by the constitution or some valid statute, it may be inquired into and the excess of jurisdiction corrected or annulled on appeal from its judgment. The defect here alleged is in the non-existence, in the law, of the court itself. That presents a somewhat different case from an exception to the right of a court, admitted to exist, to try a particular matter; the latter is permitted, while public policy may prohibit the other.

The rule that the acts of *de facto* officers cannot be questioned collaterally, includes the acts of judicial as fully as of other officers.

In *State* v. *Brum*, 12 Minn. 538, the court held that the judge who held the court below, at the trial of the defendant, was at least a *de facto* officer, and that until his right to the office should be determined in a direct proceeding for that purpose, it could not be questioned in a collateral proceeding. Many of the definitions of a *de facto* officer in the text-books and decided cases assume that there can be no *de facto* officer, except in a *de jure* office; and Dill. Mun. Corp., § 276, goes so far as to say, "in order that there may be a *de facto* officer, there must be a *de jure* office; and the notion that there can be a *de facto* office has been characterized as a political solecism, without foundation in reason and without support in law, and therefore a person cannot be a *de facto* officer of a municipal corporation when the corporation or people have in law no power, in any event, to elect or appoint such an officer."

Whether there can be a *de facto* office—a *de facto* court—is the important question in the case, and it is one of no small difficulty. While there have been many cases in which it was attempted to call in question, in a collateral proceeding, the legal right of an officer to hold an office, there have been few where the legal existence of the office itself was contested. The reason given for the *de facto* doctrine applies as well to offices and courts as to officers. Said the court in *State* v. *Carroll*, 38 Conn. 467, "the *de facto* doctrine was introduced into the law as a matter of policy and necessity, to protect the interests of the public and of individuals whose interests were involved in the official acts of persons exercising the duties of an office without being lawful officers." It would be a matter of almost intolerable inconvenience, and be productive of many injustices, of individual hardship and injustice, if third persons, whose interests or necessities require them to rely upon the acts of the occupants of public offices, should be required to ascertain at their peril the legal right to the offices which such occupants are permitted by the state to occupy. Taking even the narrowest definition of an officer *de facto*, viz., that he is one who is exercising the duties of an office under color of legal right to the office, the reasons that justify the doctrine apply with equal force to a court or office where the same may be said to exist under color of right; that is, under color of law. That there may be a *de facto* municipal corporation, and consequently *de facto* officers of the same, follows from the rule laid down in Cooley

Const. Lim., § 254. "If a municipal corporation appears to be acting under color of law and recognised by the state as such, such a question (that is of the legal existence of the corporation) should be raised by the state itself by *quo warranto*, or other direct proceeding." And it is sustained by many anthorities, holding that the question cannot be raised collaterally: *State* v. *Carr*, 5 N. H. 367; *People* v. *Maynard*, 15 Mich. 463; *Stuart* v. *School Dist.*, 30 Id. 69; *Bird* v. *Perkins*, 33 Id. 28; *President, &c.*, v. *Thompson*, 20 Ill. 197; *Kittering* v. *Jacksonville*, 50 Id. 39; *Geneva* v. *Cole*, 61 Id. 397; *Kayser* v. *Bremen*, 16 Mo. 88; *State* v. *Weatherby*, 45 Id. 17; *St. Louis* v. *Shields*, 62 Id. 247; 1 Dill. Mun. Cor., § 43.

In *Secombe* v. *Kittelson*, 25 Minn. 555, the court held, in effect, that there might be a *de facto* state government.

In the line of these authorities are the only two cases we have found in which an attempt was made to contest collaterally the legal existence of a court: *Fraser* v. *Freelon*, 53 Cal. 634, was a *certiorari* to review the proceedings of the Municipal Court of Appeals of San Francisco in a private action. An attempt was made to draw in question the legality of that court. The Supreme Court after referring to the rule in case of a *de facto* officer, said: "It is manifest that the question whether the office which was attempted to be created by statute has a legal existence is of vastly more importance and of greater interest to the public than the question of the right of the incumbent," and held that the question could not be raised except in an action or proceeding by the state. *State* v. *Rich*, 20 Mo. 393, was an appeal from a judgment of the Lawrence county circuit court, quashing an indictment found in, and removed into it from, the Stone county circuit court, on the ground that the latter county had not been constitutionally established, and consequently there could be, in point of law, no such court as the Stone county circuit court, where an indictment could lawfully be found. The Supreme Court held that, "all such inquiries must be excluded whenever they come up collaterally, and the county, its courts and officers, must be treated as existing in fact, the lawfulness of which cannot be questioned, unless in a direct proceeding for that purpose." In view of these authorities and of the reason that underlies the rule applied to acts of persons in the actual exercise, under certain circumstances, of the duties of public officers, and of the great public mischiefs

that might sometimes arise but for the application of the rule to courts, we arrive at the conclusion that there may be *de facto* courts or offices, the legality of whose existence cannot be questioned, except in a direct proceeding by the state for that purpose.

We need not in this case attempt a definition to cover all instances of a court or officer *de facto*. It is enough to determine upon the particular facts of this case. But we may go so far as to lay down the proposition, that where a court or office has been established by an act of the legislature apparently valid, and the court has gone into operation, or the office is filled and exercised under such act, it is to be regarded as a *de facto* court or office. In other words, that people shall not be made to suffer because misled by the apparent legality of such public institutions. It remains only to apply the principle to the case in hand. In *Sup'rs* v. *Heenan*, 2 Minn. 330, it being alleged that a certain law had not passed the two houses in the manner prescribed by the constitution, the court decided that it was to be tried by the court and not by a jury, and that it might inspect the original bills on file with the secretary of state, and have recourse to the journals of the legislature to ascertain whether or not the law had received all the constitutional sanctions to its validity. And in *State* v. *Hastings*, 24 Minn. 78, upon a similar question, it was decided that the effect of signing the enrolled bill by the presiding officers of the two houses, as required by the constitution, is to authenticate the bill, and that being authenticated it is presumed to have passed in accordance with the requirements of the constitution; that under the rule in *Sup'rs* v. *Heenan*, *supra*, the presumption is not conclusive, but may be overthrown by a reference to the journals. There could be no such presumption, and no necessity of reference to the journals to overthrow it, if courts took judicial notice of the contents of the journals or of the course of bills in the two houses. The act in question having been authenticated in the proper manner and approved by the governor, and the subject of it being within the constitutional power of the legislature, was, under the presumption stated in *State* v. *Hastings*, *supra*, *prima facie* a valid law, and the court it attempted to create, *prima facie* a legal court. It was therefore, within the principle we have stated, a court *de facto*.

Application denied.

MITCHELL, J., *dissenting*.—I concur in the conclusion that under the facts of this case the legal existence of the municipal court of

Mankato cannot be attacked collaterally in this action, but only by direct proceeding for that purpose, and this, as I understand it, is, strictly speaking, the only matter properly before us at this time. But I am unable to concur in the views expressed in the majority opinion, that even if the act creating the court was never constitutionally passed, still it was a *de facto* court. The logical result of this would be that the person assuming to act as judge of that court would be an officer *de facto* and the judgments of the court as valid as those of a legal court. To borrow an expression from the majority opinion, I think that a *de facto* court or office is a political solecism. The idea of an officer *de facto* presupposes the existence of a legal office. It seems to me that there cannot be an officer *de facto* unless there is a legal office, so that there might be an officer *de jure*. There are many cases to the effect that a person holding an office under an unconstitutional law is an officer *de facto*, but I think that in every one it will be found that there was a legal office and that the law only went to the mode or manner of filling it. As suggested in the opinion, the *de facto* doctrine is founded on reasons of public policy and necessity, but it must have some reasonable limit, unless we are ready to recognise practical revolution and legislative right to ignore all constitutional barriers. As bearing on the views here suggested, see Dill. Mun.Corp., § 276, Cooley Const. Lim. 750, 751, and note; *Carleton* v. *People*, 10 Mich. 250; *In re Boyle*, 9 Wis. 264; *Ex parte Strang*, 21 Ohio St. 610; *Decorah* v. *Bullis*, 25 Iowa 15; *Hildreth's Heirs* v. *McIntire's Devisee*, 1 J. J. Marsh. 207.

BERRY, J.—I concur with my brother MITCHELL.

GENERAL RULE.—No principle is better settled than that the acts of an officer *de facto* are valid when they concern the public or third persons who have an interest in the thing done: *Knight* v. *Corporation of Wells*, Lutw. 508; *Knowles* v. *Luce*, Moore 109; *O'Brian* v. *Knivan*, Cro. Jac. 552; *Parker* v. *Kett*, 1 Ld. Raym. 658; *Rex* v. *Bedford Level*, 6 East 356; *Fowler* v. *Beebe*, 9 Mass. 231; *State* v. *Carroll*, 38 Conn. 449; *People* v. *Collins*, 7 Johns. 549; *McInstry* v. *Tanner*, 9 Id. 135; *Wilcox* v. *Smith*, 5 Wend. 231; *People* v. *Bartlett*, 6 Id. 422; *People* v. *White*, 24 Id. 525; *People* v. *Covert*, 1 Hill 674; *Bucknam* v. *Ruggles*, 15 Mass. 180; *Baird* v. *Bank of Washington*, 11 S. & R. 411; *Cocke* v. *Halsey*, 16 Pet. 85; *Trustees* v. *Hills*, 6 Cow. 23; *Parker* v *Board of Sup'rs*, 4 Minn. 59; *Brown* v. *Lunt*, 37 Me. 423; *State* v. *Brown*, 12 Minn. 538; *McCormick* v. *Fitch*, 14 Id. 252; *Com'rs* v. *Brisbin*, 17 Id. 451; *People* v. *Peabody*, 6 Abb. Pr. 228; *People* v. *Cook*, 8 N. Y. 67; *Town of Plymouth* v. *Painter*, 17 Conn. 585; *In re Boyle*, 9 Wis. 264; *Board of Auditors* v. *Benoit*, 20 Mich. 176; *Riddle* v. *County of Buford*, 7 S. & R. 386; *Peo-*

ple v. *Nostrand*, 46 N. Y. 375 ; *Savage* v. *Ball*, 2 C. E. Green 143 ; *Belfast* v. *Morrill*, 65 Me. 580 ; *People* v. *Staton*, 73 N. C. 546 ; *Rice* v. *Commonwealth*, 3 Bush 14.

EXCEPTIONS.—Acts of *de facto* officers are not valid when pleaded for the benefit of the officer himself: *Patterson* v. *Miller*, 2 Metc. (Ky.) 493 ; *Venable* v. *Curd*, 2 Head 582 ; *Gourley* v. *Hankins*, 2 Clark 75 ; *Kimball* v. *Alcorn*, 45 Miss. 151 ; *Green* v. *Burke*, 23 Wend. 490. The doctrine does not apply as against the people in an action to try the title to the office ; *People* v. *Albany, &c., Railroad*, 55 Barb. 344. Nor as against an officer *de jure* upon a question as to the emoluments of the office : *McCue* v. *Wapello*, 56 Ia. 698. Nor as to the acts of a mere usurper, without color of title : *Hooper* v. *Goodwin*, 48 Me. 79 ; *Vaccari* v. *Maxwell*, 3 Blatch. 368.

INCIDENTS OF THE RULE.—Their acts cannot be questioned collaterally : *Commissioners* v. *Brisbin*, 17 Minn. 451 ; *Aulanier* v. *Governo*, 1 Tex. 653 ; and see most of the authorities first cited. They must be in actual possession of the office, *McCahon* v. *Commissioners*, 8 Kans. 437 ; *Petersilia* v. *Stone*, 119 Mass. 465. They cannot be compelled to act, and will incur no liability by a mere omission to act : *Olmsted* v. *Dennis*, 77 N. Y. 378 ; *Bentley* v. *Phelps*, 27 Barb. 524.

PARTICULAR INSTANCES WHERE PERSONS HELD OFFICES DE FACTO.—One appointed by the governor when the governor had no authority to appoint, *Parker* v. *Baker*, 8 Paige 428 ; a justice appointed by selectmen having no power to appoint : *Mallett* v. *Uncle Sam Co.*, 1 Nev. 188 ; a clerk appointed to the city council by the vote of an alderman *de facto : People* v. *Stevens*, 5 Hill 616 ; a justice holding over after the expiration of his term : *Wilcox* v. *Smith*, 5 Wend. 231 ; a justice who was also postmaster : *McGregor* v. *Balch*, 14 Vt. 428 ; a clerk re-elected but who has failed to give bond or take the oath : *Douglas* v. *Neil*, 7 Heisk. 438 : one appointed by the governor but not confirmed by the senate : *Brady* v. *Howe*, 50 Miss. 607 ; one holding under apparent authority of a statute which is afterwards declared unconstitutional : *Commonwealth* v. *McCombs*, 56 Penn. St. 436 ; aldermen acting as judges of the criminal court under a statute afterwards declared void : *People* v. *White*, 24 Wend. 520 ; officers failing to take the oath of office : *People* v. *Collins*, 7 Johns. 549 ; *In re Kendall*, 85 N. Y. 302 ; a constable who at the time of making the levy was a minor : *Green* v. *Burke*, 23 Wend. 490.

EXCEPTIONS TO THE ABOVE.—An alderman elected a representative to Congress, and accepting the latter office, is no longer alderman *de jure* or *de facto : People* v. *Common Council*, 77 N. Y. 503. Where an act of the legislature gave a city a new charter, which was adopted, the offices under the old charter were determined, by the act of adoption, and their incumbents were no longer officers *de jure* or *de facto : Long* v. *The Mayor*, 81 N. Y. 425.

It has been held that there may be an officer *de facto* without appointment or election : *McLean* v. *State*, 8 Heisk. 22. But there must have been an acquiescence by the public in the acts of the person holding : *Kimball* v. *Alcorn*, 45 Miss. 151.

The rule that there can be no officer *de facto* where there is no office *de jure*, where the law itself negatives the idea that there can be a legal incumbent, is recognised in some of the states : *Carleton* v. *The People*, 10 Mich. 250 ; *Ex parte Strang*, 21 Ohio St. 610.

General reputation that they are officers, with proof that they acted as such, is sufficient to show that the persons are officers *de facto : Rung* v. *Grant*, 7

Wend. 341; *McCoy* v. *Curtice*, 9 Id. 17.

The first recorded mention of the doctrine is found in the case of *The Abbe of Fontaine*, tried in 1431, and found in the Year Books. The abbacy being vacant an election was held at which R. had twenty-four votes and F. but eight votes. F., notwithstanding, procured himself to be inducted into the office by the visiting ordinary, and took possession of the convent, and while so wrongfully holding possession, executed the bond in suit. The contention was as to his authority to execute the bond. The report does not state the decision of the court, but the question whether F. was not an officer *de facto* and his acts valid was freely discussed by the judges, and the conclusion seems to be that his act in executing the bond was legal.

Knowles v. *Luce*, Moore 109, frequently cited, was where two stewards were authorized to hold a manorial court jointly, and one held court alone and took a surrender. It was held that he had sufficient color of title to constitute him an officer *de facto*, and the surrender was sustained.

In *O'Brian* v. *Knivan*, Cro. Jac. 552, a new bishop, put in possession before the old one was legally removed, was held a good officer *de facto* as to third persons. In *Lord Dacre's Case*, 1 Leonard 288, where a servant of the steward held manorial court without authority, his acts were held valid as those of a *de facto* officer. So the deputy of a deputy was held a good officer *de facto*, although the deputy had no power to appoint: *Leak* v. *Howel*, Cro. Eliz. 533.

Parker v. *Kett*, 1 Ld. Raym. 658, is a case frequently referred upon this question. In this case Lord HOLT defined an officer *de facto* to be, "no other than he who has the reputation of being such steward, and yet he is not a good steward in point of law." This case was followed by *Rex* v. *Bedford Level*, 6 East 356, in which *Knowles* v. *Luce*, *supra*, was noticed and relied upon. This was a case where a deputy recording officer continued to act after the death of his principal, and he was held an officer *de facto*. Lord ELLENBOROUGH, following the definition in *Parker* v. *Kett*, considered an officer *de facto* to be, "one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law," but he further observed that such "reputation" must necessarily have ceased with the knowledge of the death of his principal. The decision proceeds upon the theory that the steward after the death of his principal was acting *colore officii*, and upon this point his lordship says, "this must be understood of acts of the under-steward after the death of his principal, and *before his death is known;* for if that were known to the tenants, what color could he have to act?" And he adds, that this doctrine (Moore 112) seems no more than what was the law in the case of all judicial offices when the interest of the officers determined on the demise of the crown; for though in consideration of law the commissions of the judges immediately determined on such demise, yet their intermediate acts, between the demise of the crown and notice of it, were good, citing 2 Hale's P. C. 24, Cro. Car. 97.

Of the earlier American cases, that of *Fowler* v. *Bebee*, 9 Mass. 231, is frequently cited and may be regarded as a leading case on this subject. This case sustains the acts of an officer appointed by the governor, and exercising the functions of the office some months before the law creating the office and authorizing the appointment came into force.

In *State* v. *Carroll*, 38 Conn. 449, the question arose as to the acts of one appointed by and acting pursuant to an unconstitutional law, performed before the unconstitutionality of the law had been judicially determined, and it was there held that his acts were valid as the acts of an officer *de facto*. The court,

BUTLER, C. J., reviews the authorities fully and gives this definition of what constitutes an officer *de facto*. "An officer *de facto* is one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid so far as they involve the interests of the public and third persons, where the duties of the office were exercised.

"First, without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be.

"Second, under color of a known and valid appointment or election, but where the officer had failed to conform to some precedent requirement or condition, as to take an oath, give a bond or the like.

"Third, under color of a known election or appointment, void because the officer was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power, or defect being unknown to the public.

"Fourth, under color of an election or appointment by or pursuant to an unconstitutional law, before the same is adjudged to be such."

In *People* v. *White*, 24 Wend. 520, the prisoner was indicted, tried and convicted in the courts of general sessions and oyer and terminer in the city of New York, and it was, among other things, objected, against the validity of the judgment, that the aldermen of the city could not rightfully sit in those courts, that the acts of the legislature conferring this authority were repugnant to the constitution, and therefore void. The court, BRONSON, J., upon this point, held that they were at least judges *de facto* with color of legal title, and that their acts were valid and could not be questioned collaterally, and the judgment was affirmed. Upon the case being removed into the court for the correction of errors, the chancellor held that "the principle, that the official acts of officers *de facto* are valid as between third persons, cannot properly be applied to an unconstitutional exercise of power by an officer *de jure* who claims to exercise that power by virtue of such office:" Id. p. 539. Senator EDWARDS was of opinion that the acts of the court as a court *de facto* could not be sustained: Id. 550. Senator FURMAN, although of opinion that the court as constituted was not organized according to the statute, held that the constitutional objection could not be raised in this collateral proceeding. With him agreed Senator ROOT: Id. 560. Senator VERPLANCK was of opinion that they were judges *de facto*, and their acts could not be questioned in this proceeding: Id. 563, 567. The case was reversed, but upon other grounds stated in the opinion.

The case of *Hildreth's Heirs* v. *McIntire's Devisees*, 1 J. J. Marsh. 206, more nearly approaches the principal case in its peculiar features than any other. There, under some legislative sanction, a court of appeals had been established, and it was held to be unconstitutional, in a collateral proceeding respecting the rights of third persons. The court, ROBERTSON, J., say, "A *de facto* court of appeals cannot exist under a written constitution which ordains our Supreme Court, and defines the qualifications and duties of its judges and prescribes the mode of their appointment. * * * Without a total revolution there can be no such political solecism in Kentucky as a *de facto* court of appeals," and the court holds the acts of the judges of such court void.

The precise question presented in the principal case, it is believed, has not before been considered by a court of last resort, although questions of the constitutionality of the law under which per-

sons were acting have arisen in connection with the question of *de facto* officers. While the principal case has met with much unfavorable criticism, it would seem that some of it at least arises from the employment of the term "*de facto*" in the sense there used, rather than from any well-grounded belief that the decision is not in accordance with principle. The term "*de facto*" is recognised as having a certain meaning and use in connection with persons holding and exercising the functions of an office without having a strict legal right thereto; but its use as applied to political organizations is not frequent, and indeed, by some very eminent law writers, its right to be so used seems to be denied.

In *Williams* v. *Bruffy*, 6 Otto 176, the Supreme Court of the United States speaks of *de facto* governments, and instances the circumstances under which they may be said to exist, and when their acts will be recognised as the acts of a *de facto* power. Such a *status*, however, was not conceded to the confederate states, although the legislative acts of the several states in rebellion were held to be of binding force where they did not impair or tend to impair the supremacy of the national authority, or the just rights of citizens under the constitution.

If, as stated in this case, there may exist *de facto* governments, there would seem to be no good reason why the term may not be applied to a court, under circumstances as shown in the principal case.

The objection that a *de facto* officer presupposes a *de jure* office, seems at first thought to have much force in the discussion of this question, but considered in the light of the two cardinal doctrines of the *de facto* law—possession under color of right; and the public necessity of holding valid the acts of those who have been reputed and acknowledged by the public as having rightful authority—it would seem to be a long distance from being a controlling canon of law in such cases.

HOMER C. IRISH.

Minneapolis.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF KANSAS.[1]
COURT OF ERRORS AND APPEALS OF MARYLAND.[2]
SUPREME JUDICIAL COURT OF MASSACHUSETTS.[3]
COURT OF CHANCERY OF NEW JERSEY.[4]
SUPREME COURT OF VERMONT.[5]

ACTION. See *Surety*.

Promise to pay Debt of Promisee to Third Person.—A promise by A. to B., who has assigned certain goods to A., to pay the amount owed by

[1] From A. M. F. Randolph, Esq., Reporter, to appear in 32 Kansas Reports.
[2] From J. Shaaf Stockett, Esq., Reporter; to appear in 61 Md. Rep.
[3] From John Lathrop, Esq., Reporter; to appear in 136 Mass. Rep.
[4] From Hon. John H. Stewart, Reporter; to appear in 38 N. J. Eq. Rep.
[5] From Edwin T. Palmer, Esq., Reporter; to appear in 56 Vt. Rep.